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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1242~~ 162

DORIS NYYSSONEN, *Petitioner,*

vs.

BENDIX CORPORATION, *Respondent.*

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1965.

No. 1343

DORIS NYYSSONEN,

Petitioner,

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BENDIX CORPORATION,

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The motion on whose denial this second petition for writ of certiorari purports to be based was characterized by the Court of Appeals as "frivolous" (Appendix to Petition, p. 2a). The present petition is no less frivolous.

Petitioner's primary "Question" is whether the Court of Appeals has authority over a motion under Federal Rule 60(b) presented after affirmance of the judgment below by the Court of Appeals (and, indeed, after denial of a petition for rehearing of that affirmance, denial of a previous petition for writ of certiorari, and denial of petition for rehearing of the latter denial); yet it was petitioner who, by presenting this motion to the Court of Appeals, directly invoked and relied on the very authority now sought to be challenged.

It is therefore clear that the issue of supposed lack of authority presented here was never presented to the Court of Appeals. It is completely and entirely frivolous.

The present petition is submitted after eight distinct and separate rebuffs to petitioner, from the District Court, the Court of Appeals, and this Court.*

Tenacity of purpose is admirable, to an extent. That extent has long since been exceeded here. Petitioner has presented the same claim eight separate times, in various procedural guises. The present petition is no more than a ninth effort for additional review. It warrants censure (of counsel) rather than sympathy.

The Court of Appeals was correct in stating "Examination of the remainder of the motion discloses that it is but a thinly disguised attempt to induce the District Court to reverse the decision of this Court" (Appendix to Petition, p. 2a). The Court of Appeals expressly denied the motion as a belated additional petition for rehearing (Appendix to Petition, p. 2a). The Chief Judge nevertheless went to the extreme of fairness by reviewing the merits of the motion and finding it without substance (p. 3a).

Accordingly, petitioner has had more than a "day in court"; there has been full hearing, eight separate times, and there is no warrant for further consideration of this case.

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* These were (1) adverse judgment by the District Court ruling the patent in suit to be invalid and not infringed; (2) denial of motions under Rule 59(a) and 52(b); (3) affirmance of non-infringement by the Court of Appeals; (4) denial of petition for rehearing by Court of Appeals; (5) denial of petition for writ of certiorari to this Court; (6) denial of petition for rehearing by this Court; (7) denial of motion under Rule 60(b) by the Court of Appeals; (8) denial of petition for rehearing by Court of Appeals.

In any event, this petition is an exercise in futility. The patent in suit was held invalid by the District Court (R. 969, R. 1027) and that holding has not been disturbed by the Court of Appeals (R. 1129).

The petition should be denied.

MORRIS RELSON,
Attorney for Respondent.

June 17, 1966.